

Serial No. 10/647,778
Examiner: FLEMING, Faye M.
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REMARKS

By this amendment no claims have been amended. No claims have been added. No claims have been cancelled. Accordingly, claims 1-20 are now pending in the application. The specification has also been amended. Reconsideration and allowance of all of the claims are respectfully requested in view of the following remarks.

Regarding Office Action Paragraph 1 – Rejection under 35 U.S.C. 101

Examiner has rejected claims 3-28 under 35 U.S.C. 101 as she believes 35 U.S.C. 101 states "Whoever invents or discovers any new and useful process, machine, manufacture or composition of matters, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title." In the decision of the United States Supreme Court in *Diamond v. Chakrabarty*, 447 U.S. 303, 206 USPQ 193 (1980) the Court stated that a "nonnaturally occurring manufacture or composition of matter – a product of human ingenuity – having a distinctive name, character [and] use" is patentable. Applicants are claiming an ATV. There can be no question that an ATV meets the definition set forth by the Court and is therefore patentable subject matter. Applicants are claiming the dimensions of the device relative to a 'standard rider' in a 'standard position'. Applicants are claiming a device, *i.e.* an ATV. Examiner goes on to state that "A standard rider and a standard position are not considered to be statutory subject matter." Examiner is mistaken in his understanding of what is being claimed. Applicants do not seek exclusivity on a "standard rider" and/or a "standard position". Applicants are not claiming either a standard rider or a standard position *per se*. Applicants are only claiming an ATV relative to them. In simpler terms, the standard rider and the standard position are part of the metrics by which an ATV will be judged to determine whether or not it is within the scope of the claims, they are not being claimed themselves. The situation is analogous to Applicants claiming an ATV having a certain length (e.g. 250 cm). In this situation it should be clear that is the ATV that is being claimed, not the Metric System of measurement, nor the device (e.g. a tape measure) by which one would do the measuring. It is clear that the present claims are directed to statutory subject matter and comply with 35 U.S.C. 101.

Reconsideration and withdrawal of the objection is respectfully requested.

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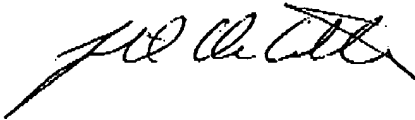
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Conclusion

In view of the above amendments and remarks, the Applicant respectfully submits that all of the currently pending claims are allowable, and that the entire application is in condition for allowance.

Should the Examiner believe that anything further is desirable to place the application in better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,



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